

By: West

S.B. No. 239

Substitute the following for S.B. No. 239:

By: Quintanilla

C.S.S.B. No. 239

A BILL TO BE ENTITLED

AN ACT

relating to notice requirements in certain enforcement actions initiated by property owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 209.006, Property Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; ~~and~~

(2) inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; and

(B) may request a hearing under Section 209.007 on or before the 30th day after the date notice was delivered to the owner; and

(3) specify a date certain by which the owner must cure the violation ~~[receives the notice];~~

(4) if a fine is sought to be levied, specify the dollar amount of any fine the association seeks to levy, and specify the section(s) of the dedicatory instrument of which the owner is in

1 violation

2 (5) Notice shall be sent by certified mail with a
3 return receipt requested, or delivered by the United States Postal
4 Service with signature confirmation service to the owner at the
5 owner's last known address as shown on the association's records.

6 (c) The date specified in the notice under Subsection (b)(3)
7 must provide a reasonable period of at least 30 days for the owner
8 to cure the violation.

9 (d) If the property owner does not cure the violation within
10 30 days the property owners association may issue the fine upon
11 which they shall provide notice to the owner of the fine. If the
12 property owner disputes the violation, the homeowner may challenge
13 the fine by providing written notice to the property owners
14 association of the challenge with the grounds for why they believe
15 they are not in violation and citations of the dedicatory
16 instrument for each violation alleged. If the property owner cures
17 the violation before the expiration for the 30 days, the fine
18 assessed is void.

19 (e) If the property owner contests the violation within 30
20 days of receiving the notice of the fine but does not cure the
21 violation within that same 30 day period, the property owners'
22 association must file suit listing each violation with citation of
23 the dedicatory instrument for each violation in a justice of the
24 peace court within 60 days after the 30 day cure period to uphold
25 and enforce the fine.

26 (f) The justice of the peace shall hold an evidentiary
27 hearing on the matter within 30 days. The parties are entitled to

1 any discovery.

2 (g) At the hearing, the property owners' association has the
3 burden of proof by a preponderance of the evidence that the property
4 owner has violated a restrictive covenant.

5 (h) The court shall determine if a violation has occurred
6 and if so, whether the fine for the violation is reasonable
7 considering the type, duration and severity of the violation.

8 (i) If the court finds the position taken by either party is
9 groundless or made in bad faith, the court may award the prevailing
10 party its attorneys' fees.

11 SECTION 2. This Act is effective January 1, 2010.